

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4439

FISCAL  
NOTE

BY DELEGATES HOUSEHOLDER, CRISS, BUTLER,  
ANDERSON, ROWAN, LINVILLE, GRAVES, MAYNARD,  
BARRETT AND BOGGS

[Introduced January 21, 2020; Referred to the  
Committee on Energy then Finance]

1 A BILL to amend and reenact §11-13EE-3 of the Code of West Virginia, 1931, as amended,  
2 relating to clarifying the method for calculating the amount of severance tax attributable to  
3 the increase in coal production at a mine due to new qualifying capital investments.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 13EE. COAL SEVERANCE TAX REBATE.**

### **§11-13EE-3. Rebate allowable.**

1 (a) *Rebate allowable.* – Eligible taxpayers ~~shall be~~ are allowed a rebate for a portion of  
2 state severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting,  
3 reducing to possession and producing coal for sale, profit, or commercial use that is attributable  
4 to the increase in the production of coal that is attributable to, and the consequence of, the  
5 taxpayer's capital investment in new machinery, equipment, or improvements to real property  
6 used at the coal mine, or coal preparation and processing facility. The amount of this rebate shall  
7 be determined and applied as ~~hereinafter~~ provided in this article.

8 (b) *Amount of rebate.*–The amount of rebate allowable is determined by multiplying the  
9 amount of the taxpayer's capital investment in new machinery, equipment, or improvements to  
10 real property directly used in the production of coal at a coal mining operation in this state by 35  
11 percent. The product of this computation establishes the maximum amount of rebate allowable  
12 under this article for the capital investment in new machinery, equipment, or improvements to real  
13 property.

14 (c) *Application of rebate amount.*–The amount of rebate allowable is determined by  
15 applying the rebate amount determined in subsection (b) of this section against 80 percent of the  
16 state portion of the severance tax paid on the privilege of severing, extracting, reducing to  
17 possession, and producing coal for sale, profit, or commercial use that is directly attributable to  
18 the increased production of coal at the mine due to taxpayer's capital investment in new  
19 machinery, equipment, or improvements to real property at the mine or coal processing and  
20 preparation plant.

21 (d) The amount of severance tax attributable to the increase in coal production at a mine  
22 due to the capital investment in new machinery, equipment, or improvements to real property ~~shall~~  
23 ~~be~~ is determined by comparing: (1) The state portion of the severance tax due under §11-13A-3  
24 of this code on coal produced from the mine during calendar year 2018, or if the taxpayer has  
25 produced coal for five years at the mine at which its capital investment in new machinery,  
26 equipment, or improvements to real property are placed in service or use the average of the state  
27 portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine  
28 during the five year period ending on December 31, 2018, whichever is less, before allowance of  
29 any tax credits, except as provided in §11-13EE-3(e) of this code; and (2) with the state severance  
30 tax due on coal produced at the mine during the then current calendar year in which the rebate  
31 amount is claimed, before allowance for any tax credits. When the amount in (2) of this section is  
32 greater than the amount in subdivision (1) of this ~~section~~ subsection, the difference is the amount  
33 of state severance tax due to the increase in coal production at the mine that is attributable to the  
34 capital investment in new machinery, equipment, or improvements to real property: *Provided*,  
35 That when the producer of the coal operates more than one mine in this state, or is a member of  
36 a controlled or affiliated group that operates one or more coal mines in this state, no credit ~~shall~~  
37 ~~be~~ is allowed unless the aggregate total coal production tonnage that qualifies for this rebate from  
38 all mines operated by the taxpayer or by members of the affiliated or controlled group in this state  
39 during the rebate year has increased above the aggregate total coal production tonnage during  
40 the base-year period, which production would have otherwise qualified for this rebate had that  
41 coal been severed after June 7, 2019, and any credit allowed is further limited to 80 percent of  
42 the increase in the aggregate amount of severance taxes paid in the rebate year when compared  
43 to the aggregate amount of severance taxes paid in the base-year period: *Provided, however*,  
44 That in no case ~~shall~~ may the severance tax attributable to any mine other than the specific mine  
45 at which capital investment in new machinery, equipment, or improvements to real property is  
46 directly used in a coal mining operation has been placed in service or use be offset by this rebate.

47 (e) When the eligible taxpayer is a new business that has produced coal in this state for  
48 two years before making the capital investment in new machinery, equipment, or improvements  
49 to real property then, for purposes of subdivision (1) in subsection (d) of this section, the base  
50 ~~shall be~~ is the average amount of state severance tax due under §11-13A-3 of this code on coal  
51 produced in this state during this two-year period.

52 (f) No rebate ~~shall be~~ is allowed under this article when credit is claimed under any other  
53 article of this chapter for capital investment in the new machinery, equipment, or improvements  
54 to real property. No credit ~~shall be~~ is allowed under any other article of this chapter when rebate  
55 is allowed under this article for the capital investment in new machinery, equipment, or  
56 improvements to real property.

NOTE: The purpose of this bill is to further clarify how a taxpayer can meet the requirement that aggregate total coal production from all mines operated by the taxpayer or by members of the taxpayer's controlled or affiliated group has increased. In determining whether a taxpayer has demonstrated the requisite increase in total coal production, only coal production that would currently qualify for the severance tax rebate shall be included in calculating the taxpayer's aggregate base-year coal production.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.